

REMARKS/ARGUMENTS

Claims 1, 2, 4 to 8, 17 to 22, 24 to 27, 29, 40, 42, 44, 46 and 48 to 55 remain in this application. Claims 3, 9 to 16, 23, 28, 30 to 39, 41, 43, 45 and 47 have been canceled, without prejudice to submitting in a continuing application. Claims 4, 5 and 27 have been rewritten in independent form including all of the limitations of the claims from which they depended.

Claims 1, 4, 6, 8, 17 to 20, 22, 24, 25, 27, 40 and 42 have been rejected as being obvious over Lemoine (EP 888859, of record) in view of Egri (US 3,986,515, newly cited) and Quigley (US 5,456,748, newly cited). It is believed that the inclusion of claim 4 is a clerical error.

Claim 4 is indicated to be allowable in paragraph 5 on page 7 of the Office Action mailed January 21, 2005 (hereinafter “latest Office Action”), where the Examiner accepted the argument that Lemoine teaches that the particles (1, 3, 5 and 7) have the same chemical nature and only differ in their color. Further, near the middle of page 3 of the latest Office Action, the Examiner indicates that claim 6, from which claim 4 depends, is not allowable because it “does not require the use of different thermoplastic materials for the respective particles,” whereas claim 4 does require different thermoplastic materials. Also, claim 4 is allowable for the same reason as claims 5 and 27, which are indicated to be allowable, near the middle of page 3 of the latest Office Action, because “the claim requires different polymer materials.”

The Examiner, near the middle of page 2 of the latest Office Action, has taken the position that Lemoine teaches that “a plurality of differently colored particles are mixed

and laminated into a consolidated sheet 13 and subsequently shredded to form a plurality of jaspe agglomerated particles (clusters of differently colored particles) that are deposited on conveyor 21.” Attorney for Applicants respectfully disagrees.

As the Examiner apparently agrees, the colored particles 1, 3, 5 and 7 shown in Figure 1 of Lemoine that form the band or sheet 13 are not agglomerated nor jaspe, as required by the present claims, but are formed directly into the sheet 13. The jaspe particles 19 of Lemoine that are formed into the band or sheet 25 are not agglomerated, as suggested by the Examiner.

Attorney for Applicants apologizes for the misstatement on page 11 of the arguments filed December 7, 2004. The jaspe sheet 13 is shredded into the jaspe particles, but the particles are not agglomerated, i.e. they are not clustered together, but are a fused, coherent mass. Therefore, while the each particle 19 is jaspe, it is not a cluster of particles, but a single fused mass that has been shredded. An agglomeration is a cluster of distinct particles. Each of the particles 19 of Lemoine is a single particle that has been formed from a plurality of distinct particles which have been fused into a single mass and some of the previously distinct particles have been ripped apart by the shredder.

The agglomerated particles of the present invention are clustered by compacting or pressing, but are easily broken apart. The particles 19 of Lemoine are fused particles of different colors. The Lemoine particles have much greater structural integrity and mechanical strength. This is demonstrated by the consolidated sheet 13, which will support itself and must be torn apart in a shredder. The agglomerated mass exiting the pellet press of the present application will fall apart upon obtaining a certain length and mass.

The structure of the Lemoine particles 19 is different than the structure and of the jaspe agglomerated particles set forth in independent claims 1, 5, 6, 17 and 27. Therefore, the present claims are allowable over Lemoine or the combination of Lemoine and Egri or Quigley.

Further, the particles 19 of Lemoine have planar surfaces resulting from the upper and lower surfaces of the sheet 13, which is shredded. See column 4, lines 28 to 30 and 33 to 36, of Lemoine. The Examiner looks to Egri and Quigley to support his position that “one of ordinary skill in the art at the time of the invention would have recognized the ‘shredding’ operation of Lemoine as forming a plurality of particles having irregular surfaces.” (Carryover sentence on pages 2 and 3 of the latest Office Action.)

However, the cited references support the position of Attorney for Applicants that shredding forms irregular contours where the sheet is separated, but does not convert the planar surfaces of the sheet into irregular surfaces. See Egri, column 6, lines 50 to 54, where he states “The squeezing ridges abut lightly on the work leg 4a and push the foil-shaped tobacco mass apart such that flakes or leaves of irregular contours remain adhering to the belt 4.” (Emphasis supplied.) Since the tobacco leaves remain adhered to the belt during the shredding operation, the irregular contours form the edges of the shredded flake that are perpendicular to the belt and the substantially planar surfaces adjacent and opposite the belt remain substantially unaffected. The plastic sheet of Lemoine is more structurally sound than the fragile tobacco leaves. Therefore, since the major planar surfaces of the tobacco leaves survive the shredding operation, the planar surfaces of the Lemoine plastic sheet will also survive.

At column 7, lines 17 to 21, Egri states "The resultant flakes or leaves 12 have an irregular peripheral shape with a wavy edge and are spacially distorted and warped." Again, it is the peripheral edges that are serrated. Warping does not change the substantially planar surface into an irregular one. It merely twists or bends the surface out of the plane, retaining its substantially smooth surface.

Quigley, at column 4, lines 15 to 30, states

"The multi-layered first and second webs 9 and 12 of cellulosic material are fed into the inlet of the shredding device 4 where the webs are cut or comminuted into irregular flakes or particles of pulp material. The shredding device 4 is provided with rotating cutter knives 20 which are designed to cut or tear the cellulosic web material with minimum compression of the cut edges of the web material. The rotating knives 20 of the shredding device 4 rotate at approximately 140 rpm and cut the cellulosic material into irregular shapes or flakes up to about 1 to 10 cm²."

Again, the irregular flakes that are formed retain their substantially planar surfaces. If the Examiner disagrees, his is respectfully requested to explain where in the cited art there is a teaching or suggestion of the regular (substantially planar) surface of the flake or sheet being converted into an irregular surface, or if the rejection is based on facts within the personal knowledge of the Examiner, support in the form of an affidavit is requested, in accordance with MPEP section 707.

Again, Lemoine, Egri and Quigley do not teach or suggest jaspe agglomerated particles wherein all of the surfaces are irregular. Since all of the present claims require this feature, they are allowable over the combination of Lemoine and Egri or Quigley.

With regard to claim 24, the Examiner notes, near the middle of page 4 of the latest Office Action, that "the agglomerated particles [of Lemoine] are ground or shredded as indicated by reference character 19. First, déchiqueteuse 17 is a "stalk shredder", whereas saupoudreuse de particules 19 is a "sprinkle of particles".

Further, grinding and shredding are two different operations. "Grinding" is to reduce to powder or small fragments by friction. One would not produce a sprinkle of particles by grinding a fused sheet. Therefore, claim 24 is allowable over Lemoine for this reason as well.

With regard to claims 40 and 42, the Examiner takes the position that slight marbling or clouding constitutes a labyrinthine and that "applicant acknowledge in the amendment dated October 3, 2003 (Page 13) that such an arrangement is inherent." (Below the middle of page 4 of the latest Office Action.) To the contrary, attorney for applicants acknowledges that such an arrangement is inherent only if the all of the surfaces are irregular.

The Examiner continues his rejection by stating "It is emphasized that the surfaces of the agglomerated particles are irregular and thus, the labyrinth interface is inherent." Again, as discussed above, attorney for applicants disagrees. Shredding a fused sheet yields particles that have smooth surfaces. Therefore, claims 40 and 42 are not obvious over Lemoine in combination with Egri or Quigley.

Claims 44 and 46 require the jaspe agglomerated particles to be formed from agglomerated particles. At the top of page 6 of the latest Office Action, the Examiner takes the position that "Lemoine describes the mixing of differently colored particles to form agglomerated particles" and that "it is well known in the floor covering industry that the particles can actually be agglomerates that are further processed or mixed, as shown for example by Hover."

This position must also apply to the rejection of claim 22, which requires the first plurality of agglomerated particles and the second plurality of agglomerated particles be

formed before the two pluralities are mixed. There is no teaching or suggestion in Lemoine of such a requirement, unless one substitutes the colored particles 1, 3, 5 and 7 of Lemoine with jaspe agglomerated particles.

Mixing of particles 1, 3, 5 and 7 does not yield agglomerated particles and mixing of agglomerated particles does not yield an agglomeration of agglomerated particles. It takes some compaction or pressure to agglomerate the particles. Absent some teaching or suggestion in the prior art that agglomerated particles have been "further processed" by agglomerating the agglomerated particles, the rejection of claims 22, 44 and 46 is improper.

The fact that "Lemoine does not exclude the materials being in agglomerate form" (middle of page 6 of the latest Office Action) is not sufficient. There must be some teaching or suggestion in the prior art of agglomerating agglomerated particles. See Tec Air, Inc. v. Denso Mfg. Michigan Inc., 192 F.3d 1353, 1359-60 (Fed.Cir.1999).

"To establish a *prima facie* case of obviousness, Denso must show "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." *Fine*, 837 F.2d at 1074, 5 USPQ2d at 1598."

(Italics in original.) Again, if the Examiner is relying on his personal knowledge of what is well or generally known in the floor covering industry concerning agglomerates being further processed into agglomerates, he is respectfully requested to support such knowledge in the form of an affidavit, in accordance with MPEP section 707. Otherwise, he is respectfully requested to point out wherein the prior art there is a teaching of agglomerating agglomerated particles, as required by present claims 22, 44 and 46.

Since the independent claims 1, 4, 5, 17 and 27 require the jaspe agglomerated particles to have only irregular, i.e. non-planar, surfaces, the presently claimed sheet and

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method distinguish Lemoine. These irregular surfaced particles yield a visual appearance different from the appearance of the Lemoine product. Since the claimed product and method are not anticipated or made obvious in view of Lemoine or the combination of Lemoine and Egri or Quigley, all of the claims remaining in the application are allowable.

Attorney for Applicants maintains that the claims are in condition for allowance. Therefore, timely issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

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Date

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